

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

NATURAL GROCERS; CITIZENS FOR GMO  
LABELING; LABEL GMOS; RURAL  
VERMONT; GOOD EARTH NATURAL  
FOODS; PUGET CONSUMERS CO-OP;  
CENTER FOR FOOD SAFETY; NATIONAL  
ORGANIC COALITION,

Plaintiffs-Appellants,

v.

THOMAS VILSACK, Secretary of the United  
States Department of Agriculture; BRUCE  
SUMMERS, Administrator of the Agricultural  
Marketing Services; UNITED STATES  
DEPARTMENT OF AGRICULTURE,

Defendant-Appellees,

AMERICAN FARM BUREAU FEDERATION;  
UNITED STATES BEET SUGAR  
ASSOCIATION; AMERICAN SUGARBEET  
GROWERS ASSOCIATION,

Intervenor-Defendants-Appellees.

No. 22-16770

**UNOPPOSED MOTION FOR A 45-DAY EXTENSION**

The government respectfully requests a 45-day extension of time, to and including February 1, 2024, in which to file the government's responsive brief. This motion is unopposed. In support of this motion, counsel state as follows:

1. This appeal arises from plaintiffs' challenge to Department of Agriculture rules governing bioengineered food disclosure standards. Plaintiffs contend that the rules are arbitrary and capricious and inconsistent with the governing statute. (Plaintiffs also previously contended but have now abandoned several constitutional claims.) On September 13, 2022, the district court vacated one portion of the regulations and remanded to the agency without vacatur, and the district court otherwise ruled for the government.

2. Following a 60-day extension of time to file the opening brief as well as further proceedings before the district court about whether the district court had issued a final, appealable judgment, plaintiffs filed their opening brief on September 5, 2023. Following a streamlined extension, the government's and intervenors' responsive briefs are currently due on December 18, 2023.

3. The government respectfully requests a further 45-day extension for the parties to file its responsive brief, to and including February 1, 2024. The requested extension is necessary to ensure adequate time to prepare and file the government's brief. Plaintiffs' opening brief raises a number of issues that involve a complex statutory scheme and voluminous administrative record. Counsel with primary responsibility for preparing the government's brief is just recovering from a case of COVID-19 followed by a "rebound" COVID-19 infection that significantly interfered with his ability to work for several weeks. He also has had and has a number of deadlines and other obligations that are making it difficult to prepare and file a brief

under the present schedule, including a number of internal or otherwise non-public deadlines related to pending matters. *See, e.g., Stirrup v. Biden*, No. 23-5094 (D.C. Cir.) (response brief due December 21, 2023) (extension motion pending). Additionally, counsel with supervisory responsibility for the government's brief has a number of other pending deadlines. *See, e.g., Cano v. Biden*, No. 22-56094 (9th Cir.) (response brief due December 11, 2023); *Walmsley v. FTC*, No. 23-2687 (8th Cir.) (response brief due December 13, 2023); *McCoy v. ATF*, No. 23-2085 (4th Cir.) (opening brief due December 27, 2023); *United States v. King County*, No. 23-35362 (9th Cir.) (response brief due December 29, 2023); *America First Legal Found. v. USDA*, No. 23-5173 (D.C. Cir.) (appellee brief due January 3, 2024); *Su v. Eastern Montgomery Cnty. Area Local 2233, Am. Postal Workers Union, AFL-CIO*, No. 23-1026 (3d Cir.) (petition for rehearing, if authorized, due January 8).

4. Undersigned counsel represent that they have exercised diligence, they intend to file the brief within the time requested, and the court reporter is not in default.

5. The government has contacted counsel for the plaintiffs-appellants and intervenor-defendants-appellees, who represent that they do not oppose this motion.

6. I declare pursuant to 28 U.S.C. § 1746 and Ninth Circuit Rule 31-2.2 that the foregoing is true and correct.

## CONCLUSION

For the foregoing reasons, the Court should extend the deadline to file the responsive brief by 45 days, to and including February 1, 2024.

Respectfully submitted,

MARK B. STERN

s/ Adam Jed

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DECEMBER 2022

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on December 8, 2023, I filed and served the foregoing by using the appellate CM/ECF system.

/s/ Adam Jed  
Adam C. Jed

### **CERTIFICATE OF COMPLIANCE**

I hereby certify that this motion complies with Federal Rule of Appellate Procedure 27(d)(1) because it has been prepared in 14-point Garamond, a proportionally spaced font. I further certify that it complies with Federal Rule of Appellate Procedure 27(d)(2) because it contains 522 words according to the count of Microsoft Word.

/s/ Adam Jed  
Adam C. Jed